

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: MAR 04 2014

-----X
SECURITIES AND EXCHANGE COMMISSION,
Plaintiff,

-v-

JOHN KINNUCAN AND BROADBAND RESEARCH
CORPORATION,
Defendants.

12 Civ. 1230 (AJN)

ORDER

-----X
ALISON J. NATHAN, District Judge:

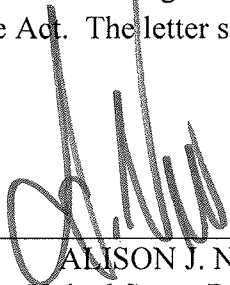
In its motion for summary judgment, the SEC requests that the Court impose against Defendants John Kinnucan and Broadband Research Corporation “the maximum three time penalty available under the law, \$4,750,337.88,” pursuant to the Court’s authority under Section 21A of the Exchange Act. Dkt. No. 23, at 13.

When determining whether the “facts and circumstances” warrant the imposition of a civil penalty under that section, 15 U.S.C. § 78u-1(a)(2), one factor that courts consider is “whether the penalty should be reduced due to the defendant’s demonstrated current and future financial condition.” *SEC v. Rajaratnam*, 822 F. Supp. 2d 432, 433 (S.D.N.Y. 2011) (quoting *Haligiannis*, 470 F. Supp. 2d at 386). Although Defendants have not filed an opposition to the SEC’s motion, Mr. Kinnucan’s wife previously submitted a letter to the Court and the SEC indicating that his financial condition is very bleak, with supporting documentation. *See* Dkt. No. 9. Mr. Kinnucan was, moreover, appointed a federal defender in the parallel criminal proceedings against him. *See* Watkins Decl., Ex. 4.

The SEC is hereby ORDERED to submit to the Court by March 7, 2014, a letter indicating its position on the relevance of the above identified factors to the Court’s assessment of Defendants’ financial condition, for purposes of determining the amount of any civil penalty to be imposed under Section 21A of the Exchange Act. The letter should not exceed five pages.

SO ORDERED.

Dated: March ⁴, 2014
New York, New York


ALISON J. NATHAN
United States District Judge